

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Jean M. Laviolette; Thomas Laviolette

CASE 43B-0896-R-2022
43B 30115981

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 1.5 ACRE-FEET PER ACRE.

This remark was not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

The March 8, 2023 Second Order Entering Defaults and Order Setting Filing Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimants and the Bozeman Regional DNRC Office ["DNRC"]. On April 7, 2023 the Laviolettes filed a Verified Motion To Amend to add the acres irrigated to the place of use description. This is a motion to amend filed pursuant to section 85-2-233(6), MCA. On May 16, 2023 the DNRC Memorandum was filed noting that the claimants would be filing a motion to amend to add the maximum acres irrigated and recommending that the volume issue remark be removed. These settlement documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), MCA.

Judicial notice is taken of the Montana Cadastral website. Rule 201, M.R.Evid.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants amending to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The changes requested in the Verified Motion to Amend arise out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, are based on the same operative facts specified in the Statement of Claim, and merely make more specific that which was already claimed on the original Statement of Claim.

2. The Preliminary Decree states that the place of use is:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	SESESWSE	30	3S	10E	PARK

The copies of the tract maps attached to the Verified Motion To Amend provide information about the tracts but the Court could not determine the place of use legal description from these maps. The Montana Cadastral website confirmed the tract information and its mapping allowed for determination of the place of use legal description covering all three contiguous tracts. The place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
5.00	S2S2	30	3S	10E	PARK

PLACE OF USE INCLUDES COS 617 DEUTSCH REMAINDER TRACT, COS 617 HALL TRACT, AND COS 431 DEUTSCH ADDITION TRACT.

3. As the Statement of Claim did not specify the number of acres irrigated, there was no basis for adding the volume issue remark. The volume issue remark should be removed as erroneous.

4. The Preliminary Decree also includes the following notice remark:

THIS EXEMPT CLAIM WAS FILED ON 07/03/2017. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43B DECREE ISSUED 01/16/1985.

This remark should be removed as having served its notice purpose.

CONCLUSIONS OF LAW

1. The requested amendment does not adversely affect other water rights as it is a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required.

Section 85-2-233(6), MCA.

2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

3. The Verified Motion To Amend and the DNRC Memorandum are sufficient to contradict and overcome the prima facie claim as it appeared in the Preliminary Decree and sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court grant the Verified Motion to Amend and make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Jean M. Laviolette
Thomas Laviolette
102 Deep Creek Rd
Livingston, MT 59047

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 30115981 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: THOMAS LAVIOLETTE
102 DEEP CREEK RD
LIVINGSTON, MT 59047

JEAN M LAVIOLETTE
102 DEEP CREEK RD
LIVINGSTON, MT 59047

Priority Date: NOVEMBER 10, 1969

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 15.00 GPM

Volume: 5.88 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSWSE	30	3S	10E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.00		S2S2	30	3S	10E	PARK

Total: 5.00

PLACE OF USE INCLUDES COS 617 DEUTSCH REMAINDER TRACT, COS 617 HALL TRACT, AND COS 431 DEUTSCH ADDITION TRACT.